

In The

OFFICE OF THE CLERK

Supreme Court of the United States

STATE OF VERMONT AGENCY OF
NATURAL RESOURCES,*Petitioner,*

v.

UNITED STATES OF AMERICA EX REL.
JONATHAN STEVENS,On Writ Of Certiorari To The United States
Court Of Appeals For The Second Circuit

JOINT APPENDIX

State of Vermont

WILLIAM H. SORRELL
Attorney GeneralJ. WALLACE MALLEY, JR.
Deputy Attorney GeneralRONALD A. SHEMS
Counsel of Record
BRIDGET C. ASAY
Assistant Attorneys General
Office of the Attorney
General
109 State Street
Montpelier, VT 05609-1001
(802) 828-3193
Counsel for Petitioner

ALAN DAVID PORT

Counsel of Record

STEPHEN J. SOULE

MATTHEW E.C. PIFER

STEPHEN G. NORTEN

MARK G. HALL

PAUL, FRANK & COLLINS, INC.

One Church Street

P.O. Box 1307

Burlington, VT 05402-1307

(802) 658-2311

Counsel for Respondent
Jonathan Stevens

SETH P. WAXMAN

*Solicitor General**Counsel of Record*

U.S. Department of Justice

Room 5614

950 Pennsylvania Ave., N.W.

Washington, D.C. 20530-0001

(202) 514-2217

Counsel for Respondent
United States of AmericaPetition For Certiorari Filed May 12, 1999
Certiorari Granted June 24, 1999

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DOCKET ENTRIES

STAYED BURL

U.S. District Court
District of Vermont (Brattleboro)

CIVIL DOCKET FOR CASE #: 95-CV-161

Filed: 05/26/95

Stevens, et al v. VT, State of, et al
Assigned to: Chief Judge J. Garvan Murtha
Demand: \$0,000 Nature of Suit: 890
Lead Docket: None Jurisdiction: US Plaintiff
Dkt# in other court: None
Cause: 31:3729 False Claims Act
JONATHAN H. STEVENS, United
States of America ex rel
plaintiff

Matthew Edwin Claude Pifer, Esq.
[COR LD NTC]
Paul, Frank & Collins, Inc.
P.O. Box 1307
Burlington, VT 05402-1307
(802) 658-2311

Tristram J. Coffin, Esq.
[COR LD NTC]
Office of the United States
Attorney
District of Vermont
P. O. Box 570
Burlington, VT 05402-0570
(802) 951-6725

v.

VERMONT, STATE OF, Agency of
Natural Resources
defendant

Ronald Albert Shems, Asst.
 Atty. General
 [COR LD NTC]
 David M. Rocchio, Esq.
 [term 09/17/97]
 [COR LD NTC]
 Vermont Attorney General's
 Office
 Pavilion Office Building
 109 State Street
 Montpelier, VT 05609-1001
 (802) 828-3171

Proceedings include all events.

1:95cv161 Stevens, et al v. VT, State of, et al

5/26/95 1 COMPLAINT; filing fee \$ 120 receipt # 7356 (pj) [Entry date 05/30/95]
 5/26/95 2 MOTION by plaintiff Sealed 1 for an ex parte order granting leave to file complaint in camera and under Seal (pj) [Entry date 05/30/95]
 6/6/95 3 CERTIFICATE OF SERVICE by plaintiff Sealed 1 (lan) [Entry date 06/06/95]
 6/19/95 4 ORDER, case reassigned to Judge J. G. Murtha (Judge Fred I. Parker) Cy to parties (pj) [Entry date 06/21/95]
 6/19/95 - File sent to Burlington (pj) [Entry date 06/21/95]
 7/20/95 5 MOTION to Seal by U.S. (pj) [Entry date 07/20/95]
 7/20/95 6 IN CAMERA MOTION to Extend the 60 day sealing and intervention period by govt (pj) [Entry date 07/21/95] [Entry date 07/21/95]

7/27/95 7 IN CAMERA ORDER granting [5-1] motion to Seal, granting [6-1] motion to Extend the 60 day sealing and intervention period to at least 9/23/95, relator is directed not to serve complaint until further order of this Court (Chief Judge J. G. Murtha) Cy to parties (pj) [Entry date 07/27/95]
 9/19/95 8 IN CAMERA MOTION Sealed (amn) [Entry date 09/22/95]
 9/19/95 9 MOTION Sealed (amn) [Entry date 09/22/95]
 9/26/95 - File sent to Rutland (amn) [Entry date 09/26/95]
 9/26/95 10 ORDER granting [9-1] motion Sealed, granting [8-1] motion Sealed (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 09/26/95]
 11/9/95 11 MOTION by plaintiff Sealed 1 sealed document (amn) [Entry date 11/13/95] [Edit date 11/13/95]
 11/9/95 12 MOTION by plaintiff Sealed 1 to Seal (amn) [Entry date 11/13/95]
 11/13/95 - File sent to Brattleboro (amn) [Entry date 11/13/95]
 11/17/95 13 ORDER granting [12-1] motion to Seal, granting [11-1] motion sealed document. Realtor [sic] is directed not to serve the complaint on the deft until further order of the Court (Chief Judge J. G. Murtha) Cy to parties (wjf) [Entry date 11/17/95]
 11/17/95 - File sent to Rutland (wjf) [Entry date 11/17/95]

1/30/96 14 MOTION by defendant Sealed 2 to Seal (lan) [Entry date 01/31/96]

1/30/96 15 MOTION by defendant Sealed 2 to Extend The Sealing and Intervention Period (lan) [Entry date 01/31/96]

1/31/96 - File sent to Brattleboro (wjf) [Entry date 01/31/96]

2/1/96 16 ORDER granting [15-1] motion to Extend The Sealing and Intervention Period, granting [14-1] motion to Seal complaint. Complaint not to be served until further order of the Court (Chief Judge J. G. Murtha) Cy to parties (wjf) [Entry date 02/02/96]

2/2/96 - File sent to Rutland (wjf) [Entry date 02/02/96]

4/10/96 17 MOTION by defendant Sealed 2 to Seal (wjf) [Entry date 04/10/96]

4/10/96 18 MOTION by defendant Sealed 2 to Extend the Sealing and Intervention Period (wjf) [Entry date 04/10/96]

4/15/96 19 ORDER granting [18-1] motion to Extend the Sealing and Intervention Period, granting [17-1] motion to Seal (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 04/15/96]

5/24/96 20 MOTION by defendant Sealed 2 to Seal (lan) [Entry date 05/24/96]

5/24/96 21 IN CAMERA MOTION by defendant Sealed 2 SEALED (lan) [Entry date 05/24/96] Edit date 05/28/96]

5/29/96 22 MOTION by plaintiff Sealed 1 to Seal (amn) [Entry date 05/29/96]

5/29/96 23 MOTION by plaintiff Sealed 1 Sealed (amn) [Entry date 05/29/96]

5/29/96 - File sent to Brattleboro (amn) [Entry date 05/29/96]

5/31/96 - ENDORSED ORDER: granting [20-1] motion to Seal (Chief Judge J. G. Murtha) (amn) [Entry date 05/31/96]

5/31/96 24 ORDER granting [22-1] motion to Seal, granting [21-1] motion SEALED (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 05/31/96]

6/26/96 25 MOTION by defendant Sealed 2 to Seal (lan) [Entry date 06/27/96]

6/26/96 26 NOTICE (SEALED) of election To Decline Intervention and Motion To Extend Seal by defendant Sealed 2 (lan) [Entry date 06/27/96]

7/1/96 27 MOTION by pltf Sealed 1 to Extend the Seal for 30 Days (kac) [Entry date 07/01/96]

7/1/96 28 MOTION by pltf Sealed 1 to Seal p#27 (kac) [Entry date 07/01/96]

7/19/96 29 MOTION by plaintiff Sealed 1 to Withdraw [22-1] motion to Seal (wjf) [Entry date 07/19/96]

7/19/96 30 NOTICE of intent to withdraw subpoena by plaintiff Sealed 1 (wjf) [Entry date 07/19/96]

7/30/96 - ENDORSED ORDER: granting [22-1] motion to Seal (Chief Judge J. G. Murtha) (wjf) [Entry date 07/30/96]

7/30/96 - ENDORSED ORDER: finding the motion Sealed [23-1] denied as moot (Chief Judge J. G. Murtha) (wjf) [Entry date 07/30/96]

7/30/96 - ENDORSED ORDER: granting [25-1] motion to Seal (Chief Judge J. G. Murtha) (wjf) [Entry date 07/30/96]

7/30/96 - ENDORSED ORDER: finding the motion to Extend the Seal for 30 Days [27-1] denied as moot (Chief Judge J. G. Murtha) (wjf) [Entry date 07/30/96]

7/30/96 - ENDORSED ORDER: granting [28-1] motion to Seal p#27 (Chief Judge J. G. Murtha) (wjf) [Entry date 07/30/96]

7/30/96 - ENDORSED ORDER: granting [29-1] motion to Withdraw [22-1] motion to Seal (Chief Judge J. G. Murtha) (wjf) [Entry date 07/30/96]

7/30/96 31 ORDER, USA has declined to intervene, seal lifted on complaint, all other contents of Court's file remain under seal, seal lifted as to all other matters occurring after the date of this ORDER case unsealed. (Chief Judge J. G. Murtha) Cy to parties (wjf) [Entry date 07/30/96]

7/30/96 - File sent to Rutland (wjf) [Entry date 07/30/96]

11/14/96 32 RETURN OF SERVICE executed as to defendant Vermont, State of on 11/7/96 (wjf) [Entry date 11/14/96]

11/25/96 33 CERTIFICATE OF SERVICE by plaintiff USA (Sealed by Order of Court) (wjf) [Entry date 11/25/96]

11/26/96 34 NOTICE OF APPEARANCE for defendant Vermont, State of by David M. Rocchio (wjf) [Entry date 11/26/96]

11/26/96 35 MOTION by defendant Vermont, State of to Extend Time to 2/25/97 to answer complaint (wjf) [Entry date 11/26/96]

11/26/96 - File sent to Brattleboro (wjf) [Entry date 11/26/96]

12/5/96 - File sent to Rutland (amn) [Entry date 12/05/96]

12/5/96 - ENDORSED ORDER: granting [35-1] motion to Extend Time to 2/25/97 to answer complaint, Answer due on 2/25/97 for Vermont, State of (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 12/05/96]

2/19/97 36 MOTION by defendant Vermont, State of to Extend Time to respond to complaint to 3/25/97 (amn) [Entry date 02/19/97]

2/19/97 - File sent to Brattleboro (amn) [Entry date 02/19/97]

2/21/97 - ENDORSED ORDER: granting in part, denying in part [36-1] motion to Extend Time to respond to complaint to 3/25/97, Answer due on 3/18/97 for Vermont, State of (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 02/21/97]

2/21/97 - File sent to Rutland (amn) [Entry date 02/21/97]

3/18/97 37 MOTION by defendant Vermont, State of to Dismiss Complaint (wjf) [Entry date 03/18/97]

3/18/97 38 MEMORANDUM by defendant Vermont, State of in support of [37-1] motion to Dismiss complaint (wjf) [Entry date 03/18/97]

3/18/97 - File sent to Brattleboro (wjf) [Entry date 03/18/97]

3/21/97 39 MOTION with memorandum in support by plaintiff USA to Extend Time to 5/2/97 to respond to Motion to Dismiss (wjf) [Entry date 03/21/97]

3/25/97 - ENDORSED ORDER: granting [39-1] motion to Extend Time to 5/2/97 to respond to Motion to Dismiss, [37-1] response deadline to motion to Dismiss Complaint reset to 5/2/97. (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 03/25/97]

3/25/97 40 REPLY (In letter form) by defendant Vermont, State of to [39-1] motion to Extend Time to 5/2/97 to respond to Motion to Dismiss (amn) [Entry date 03/25/97]

5/2/97 41 MEMORANDUM by plaintiff USA in opposition to [37-1] motion to Dismiss Complaint (pj) [Entry date 05/02/97]

5/2/97 42 OPPOSITION by relator Jonathan Stevens on behalf of plaintiff USA to [37-1] motion to Dismiss Complaint (pj) [Entry date 05/02/97]

5/9/97 - File sent to Rutland (amn) [Entry date 05/09/97]

5/9/97 43 ORDER denying motion to Dismiss Complaint [37-1] (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 05/09/97]

5/19/97 44 MOTION by defendant Vermont, State of for Reconsideration of [43-1] order denying motion to dismiss (amn) [Entry date 05/19/97]

5/19/97 45 MEMORANDUM by defendant Vermont, State of in support of [44-1] motion for Reconsideration of [43-1] order denying motion to dismiss (amn) [Entry date 05/19/97]

5/19/97 46 REPLY by defendant Vermont, State of to oppositions to [37-1] motion to Dismiss Complaint (amn) [Entry date 05/19/97]

5/19/97 - File sent to Brattleboro (amn) [Entry date 05/19/97]

5/27/97 47 TRIAL CALENDAR court trial set for 7/8/97 as the # 4 case Cy to counsel (cab) [Entry date 05/27/97]

6/3/97 48 AMICUS CURIAE MEMORANDUM by plaintiff USA in opposition to [44-1] motion for Reconsideration of [43-1] order denying motion to dismiss (amn) [Entry date 06/03/97]

6/4/97 49 ATTACHMENT by plaintiff USA to [48-1] opposition memorandum, [44-1] motion for Reconsideration of [43-1] order denying motion to dismiss (amn) [Entry date 06/04/97]

6/5/97 50 MEMORANDUM by plaintiff USA (Relator Jonathan Steven [sic]) in opposition to [44-1] motion for Reconsideration of [43-1] order denying motion to dismiss (amn) [Entry date 06/05/97]

6/6/97 51 NOTICE OF APPEAL by defendant Vermont, State of re: [43-1] order Fee Status:

\$105 paid, Rcpt#02711 Cy to Judge J. Garvan Murtha, appellate clerk, David M. Rocchio for defendant Vermont, State of, Tristram J. Coffin for plaintiff USA, Matthew Edwin Claude Pifer for plaintiff USA (wjf) [Entry date 06/06/97]

6/6/97 52 MOTION by defendant Vermont, State of to Stay Pending Appeal (wjf) [Entry date 06/06/97]

6/6/97 53 MEMORANDUM by defendant Vermont, State of in support of [52-1] motion to Stay Pending Appeal (wjf) [Entry date 06/06/97]

6/9/97 54 FORMS C AND D re: [51-1] appeal by Vermont, State of (pjd) [Entry date 06/09/97]

6/11/97 55 DESIGNATION OF RECORD on appeal by defendant Vermont, State of re: [51-1] appeal by Vermont, State of (pjd) [Entry date 06/11/97]

6/11/97 - ENDORSED ORDER: granting [44-1] motion for Reconsideration of [43-1] order denying motion to dismiss. Upon reconsideration, the Court's prior ruling is affirmed. (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 06/11/97]

6/16/97 56 MOTION (Renewed) by plaintiff USA to Stay Pending Appeal (wjf) [Entry date 06/16/97]

6/16/97 57 AMENDED NOTICE OF APPEAL by defendant Vermont, State of re: [0-0] endorse order, [43-1] order Cy to Judge J. Garvan Murtha, appellate clerk, David M. Rocchio for defendant Vermont, State of,

Tristram J. Coffin for plaintiff USA, Matthew Edwin Claude Pifer for plaintiff USA, (wjf) [Entry date 06/16/97]

6/23/97 58 MEMORANDUM by relator Jonathan Stevens in opposition to [52-1] motion to Stay Pending Appeal (pjd) [Entry date 06/23/97]

6/25/97 59 REPLY by defendant Vermont, State of to response to [52-1] motion to Stay Pending Appeal (amn) [Entry date 06/25/97]

6/30/97 - File sent to Rutland (amn) [Entry date 06/30/97]

6/30/97 60 ORDER granting [56-1] motion to Stay Pending Appeal, granting [52-1] motion to Stay Pending Appeal, CASE STAYED pending appeal (Chief Judge J. G. Murtha) Cy to parties (amn) [Entry date 06/30/97] [Edit date 08/11/98]

7/7/97 61 SUPPLEMENTAL DESIGNATION OF RECORD on appeal by defendant Vermont, State of [51-1] appeal by Vermont, State of (pjd) [Entry date 07/07/97]

9/17/97 62 ATTORNEY SUBSTITUTION terminating attorney David M. Rocchio for Vermont, State of and substituting attorney Ronald Albert Shems (amn) [Entry date 09/17/97]

9/19/97 63 SCHEDULING ORDER #1 re: [51-1] appeal by Vermont, State of USCA Number 97-6141; Conference set: 10/17/97; Index to Record Due 10/22/97. (cwb) [Entry date 09/19/97]

10/27/97 - CERTIFIED AND TRANSMITTED INDEX to USCA re: [57-1] appeal by Vermont,

State of. Parties notified. (cwb) [Entry date 10/27/97]

10/27/97 - File sent to Burlington (wjf) [Entry date 10/27/97]

2/9/98 - CERTIFIED AND TRANSMITTED record on appeal to USCA re: [51-1] appeal by Vermont, State of. (cwb) [Entry date 02/09/98]

2/9/98 - File sent to USCA (cwb) [Entry date 09/04/98]

4/26/99 64 MANDATE entered 12/07/98; issued 04/22/99; AFFIRMING judgment of district court re: appeal [51-1] in accordance with the opinion of this court [copy attached]. (cwb) [Entry date 04/26/99]

5/4/99 65 REPLY (letter form) by defendant State of Vermont re: case status of appeal pursuant to [60-1] order staying case pending appeal (pls) [Entry date 05/04/99]

5/7/99 - ENDORSED ORDER: Construed as a motion to extend stay, granting [65-1] reply. Continuation of stay in effect pending final disposition of Vermont's appeals. (Chief Judge J. G. Murtha) (pls) [Entry date 05/07/99]

5/26/99 - RECORD ON APPEAL RETURNED re: [57-1] appeal by Vermont, State of, [51-1] appeal by Vermont, State of. (cwb) [Entry date 05/26/99]

5/26/99 - File sent to Burlington (cwb) [Entry date 05/26/99]

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GENERAL DOCKET FOR
Second Circuit Court of Appeals

Filed: 6/12/97

Court of Appeals Docket #: 97-6141
Nsuit: 1890 STATUTES-Other
USA v. State of VT
Appeal from: U.S. District Court VTDC

Case type information:

- 1) Civil
- 2) USA as party
- 3) none

Lower court information:

District: 0210-01: 95-cv-161
Trial Judge: J. Garvan Murtha, Chief Judge
Date Filed: 5/26/95
Date order/judgment: 5/9/97
Date NOA filed: 6/6/97

Fee status: paid

Prior cases:

None

Current cases:

None

Panel Assignment:

Panel: ALK JMW JBW 1705 :CA2 2/2/98 am
Date of decision: 12/7/98

Proceedings include all events.

97-6141 USA v. State of VT

JONATHAN H. EX REL.
JONATHAN H. STEVENS
Plaintiff - Appellee

Mark G. Hall, Esq.
802-658-2311
[COR LD NTC ret]
Paul, Frank & Collins
1 Church St.
P.O. Box 1307
Burlington, VT 05402-1307

UNITED STATES OF
AMERICA, ex rel. Jonathan
Stevens, qui tam and as
relator,
Intervenor

Douglas N. Letter, Esq.
202-514-3602
Room 9106
[COR LD NTC ret]
U.S. Dept. of Justice
Appellate Litigation
Counsel
Civil Division
601 D St., NW
Washington, DC 20530

VERMONT, STATE OF,
AGENCY OF NATURAL
RESOURCES,
Defendant - Appellant

David M. Rocchio, Esq.
802-828-3333
[COR LD NTC ret]
Ron Shems, Esq.
802-828-3171
[COR LD NTC ret]
Attorney General's Office
State of Vermont
109 State St.
Montpelier, VT 05609

STATE OF NEW YORK
Amicus Curiae

Howard L. Zwickel, Esq.
518-473-6857
[COR LD NTC ret]
Attorney General's Office
State of New York
The Capitol
Albany, NY 12224

STATE OF ALASKA
Amicus Curiae

Susan D. Cox, Esq.
907-465-3600
[COR LD NTC ret]
Office of the Attorney
General
of the State of Alaska
P.O. Box 110300
Juneau, AK 99811-0300

STATE OF ARIZONA
Amicus Curiae

Tim Delaney, Esq.
[COR LD NTC ret]
Attorney General's Office
State of Arizona
1275 W. Washington
Phoenix, AZ 85007

STATE OF CALIFORNIA
Amicus Curiae

Thomas F. Gede, Esq.
916-323-7355
Suite 1720
[COR LD NTC ret]
State Attorney's Office
State of California
1300 I St.
P.O. Box 944255
Sacramento, CA 94244-2550

STATE OF COLORADO
Amicus Curiae

Richard A. Westfall, Esq.
303-866-3052
5th Fl.
[COR LD NTC ret]
Office of the Attorney
General
of the State of Colorado
1525 Sherman St.
Denver, CO 80203

STATE OF CONNECTICUT-
OFFICE OF PROTECTION
AND ADVOCY [sic] FOR
PERSONS WITH
DISABILITIES,
CONNECTICUT LEGAL
RIGHTS PROJECT, INC.
Amicus Curiae

Jane S. Scholl, Esq.
860-566-8282
[COR LD NTC ret]
Attorney General's Office
State of Connecticut
55 Elm St.
P.O. Box 120
Hartford, CT 06141-0120

STATE OF DELAWARE
Amicus Curiae

Michael J. Rich, Esq.
302-577-8400
[COR LD NTC ret]
Office of Attorney General
of the State of Delaware
820 N. French St.
Wilmington, DE 19801

STATE OF HAWAII
Amicus Curiae

Girard D. Lau, Esq.
808-586-1500
[COR LD NTC ret]
Attorney General's Office
State of Hawaii
425 Queen St.
Honolulu, HI 96813

STATE OF IDAHO
Amicus Curiae

David L. Hennessey, Esq.
208-334-2400
[COR LD NTC ret]
Attorney General's Office
State of Idaho
P.O. Box 83720
Boise, ID 83720

STATE OF ILLINOIS [sic]
Amicus Curiae

Barbara Preiner, Esq.
[COR LD NTC ret]
Attorney General's Office
State of Illinois
100 W. Randolph St.
Chicago, IL 60601

STATE OF IOWA
Amicus Curiae

Elizabeth M. Osenbaugh,
Esq.
515-281-6736
[COR LD NTC ret]
Office of Attorney General
of the State of Iowa
Hoover Bldg.
Des Moines, IA 50319

STATE OF KANSAS
Amicus Curiae

John W. Campbell, Esq.
913-296-2215
[COR LD NTC ret]
Office of Attorney General
of the State of Kansas
301 S.W. 10th Ave.
Topeka, KS 66612

STATE OF MAINE
Amicus Curiae

Thomas D. Warren, Esq.
207-626-8800
[COR LD NTC ret]
Office of Attorney General
of the State of Maine
6 State House Station
Augusta, ME 04333-0006

STATE OF MARYLAND
Amicus Curiae

Andrew H. Baida, Esq.
410-576-6300
[COR LD NTC ret]
Office of Attorney General
of the State of Maryland
200 St. Paul Pl.
Baltimore, MD 21202

STATE OF MICHIGAN
Amicus Curiae

Thomas L. Casey, Esq.
517-373-1124
[COR LD NTC ret]
Office of Attorney General
of the State of Michigan
P.O. Box 30212
Lansing, MI 48909

STATE OF MISSISSIPPI
Amicus Curiae

James F. Steel, Esq.
601-359-3753
[COR LD NTC ret]
Office of Attorney General
of the State of Mississippi
P.O. Box 220
Jackson, MS 39205

STATE OF MONTANA
Amicus Curiae

Clay R. Smith, Esq.
406-444-2026
Justice Bldg.
[COR LD NTC ret]
Office of the Attorney
General
State of Montana
P.O. Box 201401
Helena, MT 59620-1401

STATE OF NEVADA
Amicus Curiae

Anne Cathcart, Esq.
702-687-4170
[COR LD NTC ret]
Office of Attorney General
of the State of Nevada
100 N. Carson St.
Carson City, NV 89701-4717

STATE OF
NEW HAMPSHIRE
Amicus Curiae

Steven M. Houran, Esq.
[COR LD NTC ret]
Office of Attorney General
of the State of
New Hampshire
33 Capitol St.
Concord, NH 03301

STATE OF NORTH
CAROLINA
Amicus Curiae

Andrew A. Vanore, Jr., Esq.
919-716-6400
[COR LD NTC ret]
Attorney General's Office
State of North Carolina
P.O. Box 629
Raleigh, NC

STATE OF OHIO
Amicus Curiae

Simon B. Karas, Esq.
614-466-4940
17th Fl.
[COR LD NTC ret]
Attorney General's Office
State of Ohio
30 E. Broad St.
State Office Tower
Columbus, OH 43266-0410

STATE OF OKLAHOMA
Amicus Curiae

Victor N. Bird, Esq.
405-521-3921
[COR LD NTC ret]
Office of Attorney General
of the State of Oklahoma
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105

STATE OF TEXAS Amicus Curiae	Dan Morales, Esq. 512-463-2191 [COR LD NTC ret] Attorney General's Office State of Texas Capitol Station P.O. Box 12548 Austin, TX 78711-2548	AMERICAN COUNCIL ON EDUCATION, Amicus Curiae	David Birdoff, Esq. (See above) [COR LD NTC ret]
STATE OF UTAH Amicus Curiae	Annina M. Mitchell, Esq. 801-538-9600 [COR LD NTC ret] Office of Attorney General of the State of Utah 236 State Capitol Salt Lake City, UT 84114	REGENTS OF THE UNIVERSITY OF MINNESOTA Amicus Curiae	Mark A. Bohnhorst, Esq. 100 Church St. SE [COR LD NTC ret] University of Minnesota Office of the General Counsel 325 Morrill Hall Minneapolis, MN 55455
COMMONWEALTH OF VIRGINIA Amicus Curiae	Frank S. Ferguson, Esq. 804-786-2071 [COR LD NTC ret] Office of Attorney General of the Commonwealth of VA 900 E. Main St. Richmond, VA 23219	REGENTS OF THE UNIVERSITY OF MICHIGAN Amicus Curiae	Elizabeth M. Barry, Esq. 503 Thompson St. [COR LD NTC ret] University of Michigan 4020 Fleming Admin. Bldg. Ann Arbor, MI 48109
STATE OF WEST VIRGINIA Amicus Curiae	Silas B. Taylor, Esq. 304-558-2021 Room 26 [COR LD NTC ret] Office of Attorney General State of West Virginia State Capitol Charleston, WV 25305	REGENTS OF THE UNIVERSITY OF CALIFORNIA Amicus Curiae	James E. Holst, Esq. 7th [COR LD NTC ret] University of California 300 Lakeside Dr. Oakland, CA 94612-3565
ASSOCIATION OF AMERICAN MEDICAL COLLEGES Amicus Curiae	David Birdoff, Esq. 212-318-3000 [COR LD NTC ret] Fulbright & Jaworski 666 5th Ave. New York, NY 10103	NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES Amicus Curiae	C. Peter Magrath, Esq. Ste. 710 [COR LD NTC ret] National Association of State Universities and Lang-Grant [sic] Colleges 1 Dupont Circle Washington, DC 20036

TAXPAYERS AGAINST
FRAUD, THE FALSE
CLAIMS ACT LEGAL
CENTER
Amicus Curiae

Priscilla R. Budeiri, Esq.
202-296-4826
Ste. 501
[COR LD NTC ret]
Taxpayers Against Fraud,
The False Claims
Act Legal Center
1220 19th St., N.W.
Washington, DC 20036

Official Caption 1/

Docket no. (s):97-6141

UNITED STATES OF AMERICA, ex rel. Jonathan Stevens,
qui tam and as relator,

Plaintiff-Appellee,

UNITED STATES OF AMERICA,

Intervenor,

v.

THE STATE OF VERMONT, AGENCY OF
NATURAL RESOURCES,

Defendant-Appellant.

Authorized Abbreviated Caption 2/

Docket no. (s):97-6141

USA V. STATE OF VT

1/ Fed. R. App. P. Rule 12(a) and 32(a).

2/ For use on correspondence and motions only.

6/12/97 Copy of district court docket entries and notice of appeal on behalf of Appellant VT Natural Resources filed. [97-6141] Form C due on 6/16/97. Form D due on 6/16/97. (ag41)

6/12/97 Copy of receipt re: payment of docketing fee filed on behalf of Appellant VT Natural Resources receipt #: 02711. [97-6141] (ag41)

6/12/97 Appellant VT Natural Resources Form D RECEIVED, with proof of service. [97-6141] (ag41)

6/12/97 Appellant VT Natural Resources Form C filed, with proof of service. [97-6141] Form C deadline satisfied. (ag41)

6/12/97 Appellant VT Natural Resources Form D filed, with proof of service. [97-6141] Form D. deadline satisfied. (ag41)

6/23/97 Notice of Appeal Acknowledgment Letter from David M. Rocchio for Appellant VT Natural Resources received. (ag41)

7/1/97 Notice of Appeal Acknowledgment Letter from Tristram J. Coffin for Appellee USA received. (ag41)

7/1/97 Notice of Appeal Acknowledgment Letter from Matthew Edwin Claude Pifer for Appellee USA received. (ag41)

9/5/97 Scheduling order #1 filed. Record on appeal due on 10/22/97. Appellant's brief and appendix due on 10/29/97. Appellee's brief due on 11/28/97. Argument as early as week of 12/15/97. (Pre-Argument Conference scheduled for Friday October 17, 1997 at 10:30 a.m.). (FS) (ag41)

9/5/97 Pre-Argument Conference Notice and Order from Lisa Greenberg filed. (ag41)

9/15/97 Letter from Appellants' Counsel concerning unavailability of oral argument and change of address, received. Appellants' counsel will not be available btwn Dec. 22 thru Jan. 5, 1998. (ag41)

10/23/97 Amicus Curiae State of New York, Amicus Curiae State of Alaska, Amicus Curiae State of Arizona, Amicus Curiae State of California, Amicus Curiae State of Colorado, Amicus Curiae State of Connecticut, Amicus Curiae State of Delaware, Amicus Curiae State of Hawaii, Amicus Curiae State of Idaho, Amicus Curiae State of Illinois [sic], Amicus Curiae State of Illinois, Amicus Curiae State of Iowa, Amicus Curiae State of Kansas, Amicus Curiae State of Maine, Amicus Curiae State of Maryland, Amicus Curiae State of Michigan, Amicus Curiae State of Mississippi, Amicus Curiae State of Montana, Amicus Curiae State of Nevada, Amicus Curiae State of New Hampsh [sic], Amicus Curiae State of N.C., Amicus Curiae State of Ohio, Amicus Curiae State of Oklahoma, Amicus Curiae State of Texas, Amicus Curiae State of Utah, Amicus Curiae Commonwealth of VA, and Amicus Curiae State of W.V. brief filed with proof of service. (ag41)

10/28/97 Notice of appearance form on behalf of David M. Rocchio, Esq., received. (Orig. to Calendar) (in01)

10/28/97 Appellant VT Natural Resources brief FILED with proof of service. (ag41)

10/28/97 Appellant VT Natural Resources joint appendix filed w/pfs. Number of volumes: 1. (ag41)

10/29/97 Record on appeal index in lieu of record filed. (ag41)

10/29/97 Amicus Curiae American Council Ed., Amicus Curiae Assn of American Med brief received. Problem: Pending Motion for Leave to File Amicus Brief. (ag41)

10/29/97 Amicus Curiae American Council Ed. and Amicus Curiae Assn of American Med. for Leave to File Brief as Amici Curiae, FILED (w/pfs) [1070482-1] (ag41)

10/29/97 Amicus Curiae American Council Ed. and Amicus Curiae Assn. of American Med disclosure letter pursuant to FRAP Rule 26.1 RECEIVED. (ag41)

10/30/97 Movants Univ. of Minn., Univ. of Michigan, Univ. of California, and Natl Assoc of State Motion for Leave to File Brief Amicus Curiae, FILED. (w/pfs). [1071307-1] (ag41)

10/30/97 Movants Univ. of Minn., Univ. of Michigan, Univ. of California, and Natl Assoc of State brief recieived. Problem: Pending Amicus Curiae Motion. (ag41)

11/3/97 Order FILED GRANTING motion to participate as amicus [1071307-1] by Movant Univ. of Minn., Univ. of Michigan, Univ. of California, and Natl Assoc of State, endorsed on motion form dated 10/30/97. "IT IS HEREBY ORDERED that the motion be and it hereby is granted." (For the Court: BJM) (ag41)

11/3/97 Amicus Curiae Natl Assoc of State, Amicus Curiae Univ. of California, Amicus Curiae

Univ. of Michigan, and Amicus Curiae Univ. of Minn. brief filed with proof of service. (ag41)

11/5/97 Amicus Curiae State of New York, Amicus Curiae State of Alaska, Amicus Curiae State of Arizona, Amicus Curiae State of California, Amicus Curiae State of Colorado, Amicus Curiae State of Connecticut, Amicus Curiae State of Delaware, Amicus Curiae State of Hawaii, Amicus Curiae State of Idaho, Amicus Curiae State of Illinois [sic], Amicus Curiae State of Illinois, Amicus Curiae State of Iowa, Amicus Curiae State of Kansas, Amicus Curiae State of Maine, Amicus Curiae State of Maryland, Amicus Curiae State of Michigan, Amicus Curiae State of Mississippi, Amicus Curiae State of Montana, Amicus Curiae State of Nevada, Amicus Curiae State of New Hampsh [sic], Amicus Curiae State of N.C., Amicus Curiae State of Ohio, Amicus Curiae State of Oklahoma, Amicus Curiae State of Texas, Amicus Curiae State of Utah, Amicus Curiae Commonwealth of VA, and Amicus Curiae State of W.V. to Participate in the Oral Argument of the Appeal in support of Appellant, FILED. (w/pfs). [1074631-1] (ag41)

11/10/97 Order FILED GRANTING motion to participate as amicus [1070482-1] by Amicus Curiae American Council Ed. and Assn. of American Med, endorsed on motion form dated 10/29/97. "IT IS HEREBY ORDERED, that the motion be and it hereby is granted." (BJM) (ag41)

11/10/97 Amicus Curiae American Council Ed. and Amicus Curiae Assn of American Med Brief filed with proof of service. (ag41)

11/12/97 Notice of Appeal Acknowledgment Letter from Mark G. Hall for Appellee Jonathan H. Stevens received. (ag41)

11/12/97 Notice of appearance form on behalf of Mark G. Hall, Esq., received. (Orig. to Calendar) (ag41)

11/21/97 Order FILED REFERRING motion for Amicus Curiae [sic] (State of New York) to participate in oral argument [1074631-1] routed to the panel that will hear the appeal. Order endorsed on motion dated 11/5/97. (BJM) (ag41)

11/28/97 Appellee Jonathan H. Stevens brief filed with proof of service. (ag41)

12/1/97 Movant USA Motion for Exercise of Attorney General's Right to Intervene, FILED (w/pfs). [1087279-1] (ag41)

12/1/97 AUSA brief received. Problem: Pending Motion to Intervene. (ag41)

12/1/97 Movant USA Memorandum of Law In Support of Motion to Intervene, FILED. [1087279-1] (ag41)

12/1/97 Notice of appearance form on behalf of Douglas N. Letter, Esq., received. (Orig. to Calendar) (ag41)

12/1/97 Movant Taxpayers Against motion to file brief as amicus curia [sic], FILED (w/pfs). [1087788-1] (ag41)

12/1/97 Taxpayers Against Fraud brief received. Problem: Pending Motion to file amicus brief. (ag41)

12/4/97 Order FILED GRANTING motion to Exercise of Attorney General's Right to Intervene

[1087279-1] by Movant USA, endorsed on motion form dated 12/1/97. (BJM) (ag41)

12/4/97 Intervenor USA brief filed with proof of service. (ag41)

12/5/97 Order FILED GRANTING motion to file brief as Amicus Curiae [1087788-1] by Movant Taxpayers Against, endorsed on motion form dated 12/1/97. (BJM) (ag41)

12/5/97 Order FILED (ag41)

12/5/97 Amicus Curiae Taxpayers Against brief filed with proof of service. (ag41)

12/15/97 Appellant VT Natural Resources reply brief filed with proof of service. (ag41)

12/15/97 Letter from California State University appearing amicus curiae, received. (ag41)

12/15/97 Letter frmo [sic] State of Maryland concerning appearing amicus curiae, received. (ag41)

12/15/97 Letter from Stuart & Branigin for Purdue University concerning appearing amicus curiae, received. (ag41)

12/15/97 Letter from University of Arkansas concerning appearing amicus curiae, received. (ag41)

12/15/97 Letter from University of Florida concerning appearing amicus curiae, received. (ag41)

12/15/97 Letter from University of Illinois concerning appearing amicus curiae, received. (ag41)

12/15/97 Letter from Board of Regents for South Dakota concerning appearing amicus curiae, received. (ag41)

12/31/97 Letter sent to : California State University System, Stuart & Branigin, State of Maryland,

University of Florida, Board of Regents for South Dakota, University of Arkansas, and University of Illinois, informing them that they must file a T-1080 Motion form to appear amicus curiae in the USCA. (ag41)

1/6/98 Proposed for argument the week of 2/2/98. (ca91)

1/6/98 Set for argument on 2/2/98. [97-6141] (ca91)

1/9/98 Order FILED GRANTING motion to allow oral argument for 5 minutes of time [1074631-1] by Amicus Curiae State of New York, State of Alaska, State of Arizona, State of California, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Idaho, State of Illinois, State of Illinois, State of Iowa, State of Kansas, State of Maine, State of Maryland, State of Michigan, State of Mississippi, State of Montana, State of Nevada, State of New Hampsh [sic], State of N.C., State of Ohio, State of Oklahoma, State of Texas, State of Utah, Commonwealth of VA, State of W.V., endorsed on motion form dated 11/5/97. (ca90)

1/23/98 Letter from AUSA concerning more oral argument time, received. (ag41)

1/29/98 Appellant VT Natural Resources 28(J) letter FILED. (ag41)

2/2/98 Case heard before KEARSE, WALKER C.JJ., WEINSTEIN D.J. (TAPE: #144) (ca95)

2/11/98 Record on appeal after index filed. (ag43)

3/12/98 Intervenor USA 28(J) letter FILED. (ag41)

3/19/98 Appellant VT Natural Resources 28(J) letter FILED. (ag41)

4/6/98 Intervenor USA 28(J) letter FILED. (ag41)
 5/4/98 Intervenor USA 28(J) letter FILED. (ag43)
 5/19/98 Appellant VT Natural Resources 28 (J) letter FILED. (ag41)
 6/16/98 Appellant VT Natural Resources 28 (J) letter FILED. (ag41)
 7/1/98 letter from Appellant Vermont's Atty General concerning a changed phone number, received. (ag41)
 9/8/98 Intervenor USA 28(J) letter received. [Forwarded To Panel] (ag41)
 9/11/98 Appellant VT Natural Resources 28 (J) letter received. [Forwarded To Panel] (ag41)
 12/7/98 We Have Considered All Of The State's Arguments On This Appeal And Have Found Them To Be Without Merit. The District Court's Order Denying The State's Motion To Dismiss Is AFFIRMED By Published Signed Opinion Filed. (Per ALK) [97-6141] (ag41)
 12/7/98 Judge Weinstein DISSENTING in a separate opinion filed. (ag41)
 12/7/98 Judgment filed. (ag41)
 12/16/98 Note: The OPINION PRICE is \$10.00 (rek)
 1/19/99 Appellant VT Natural Resources petition for rehearing received. Problem: caption is incorrect and District Court Memorandum of law is attached. (ag44)
 1/20/99 Appellant VT Natural Resources defective Petition for Rehearing filed. Notice sent to party to correct by 1/27/99. (ag44)

1/27/99 Appellant VT Natural Resources motion to refile petition for rehearing with incorrect caption and attachment FILED (w/pfs). [996516-1] (ag44)
 2/2/99 Appellant VT Natural Resources 28(J) letter FILED. (ag44)
 2/8/99 Motion Order for permission to refile petition for rehearing with incorrect caption and attachment FILED. Order states "It is hereby ordered that the motion be and it hereby is granted.". For the Court: BJM (ag44)
 2/8/99 Notice regarding motion order dated 2/8/99 forwarded to counsel. (ag44)
 2/8/99 Appellant VT Natural Resources petition for rehearing en banc [1337504-1] with proof of service filed. (ag44)
 2/8/99 Appellant VT Natural Resources defective petition for en banc hearing cured. Satisfy defective document response due. (ag44)
 4/13/99 Order FILED DENYING petition petition for rehearing in banc by Appellant VT Natural Resources, endorsed on form dated 2/8/99. (ag44)
 4/14/99 Notice regarding denial for petition for rehearing issued to counsel. (ag44)
 4/22/99 Judgment MANDATE ISSUED. (ag41)
 4/22/99 Notice to counsel regarding issuance of mandate. (ag41)
 4/29/99 Mandate receipt returned from the district court. (ree)

5/17/99 Notice of filing petition for writ of certiorari dated 5/12/99 filed. Supreme Ct#: 98-1828. (ag44)

5/24/99 Record on appeal RETURNED to lower court. No. of volumes: 1 (ref)

6/28/99 Letter dated 6/24/99 from the Supreme Court advising of order GRANTING petition for writ of certiorari [1402127-1] endorsed on motion form dated 5/17/99 filed. (Supreme Court #98-6141) (ag44)

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

THE UNITED STATES)
OF AMERICA,)
ex rel Jonathan H.) COMPLAINT UNDER 31
Stevens,) U.S.C. § 3729-3733 of the
Plaintiff,) FEDERAL FALSE CLAIMS
v.) ACT
THE STATE OF)
VERMONT AGENCY OF)
NATURAL RESOURCES,)
Defendant.)

NOW COMES the United States of America, by and through Jonathan H. Stevens *qui tam* as relator, and complains of defendant, alleging as follows:

1. Jonathan H. Stevens is a citizen of the United States and a resident of the State of Vermont.
2. At times material to this action, Mr. Stevens was an employee of the defendant.
3. This suit is brought as a *qui tam* action by Jonathan H. Stevens for himself and as a relator on behalf of the United States of America ("United States") pursuant to 31 U.S.C. § 3730(b)(1).
4. Jurisdiction exists under 31 U.S.C. § 3730(b)(1) and 31 U.S.C. § 3732 because this action seeks remedies on behalf of the United States for violations of 31 U.S.C. § 3729 by the defendant.

5. Venue is proper in this District under 31 U.S.C. § 3732 (a) because the defendant is a division of the government of the State of Vermont and can be found within the State of Vermont and Federal District of Vermont, and acts proscribed by 31 U.S.C. § 3729 occurred within the Federal District of Vermont.

6. The defendant Vermont Agency of Natural Resources ("ANR"), is composed of individual departments, including the Department of Environmental Conservation ("DEC").

7. The DEC is divided into the Office of the General Counsel, the Office of Air and Waste Management and the Office of Water Resources.

8. Each office of DEC is further divided into several divisions; the Office of Water Resources is divided into five (5) divisions, one of which is the Water Supply Division ("WSD").

9. This suit is based upon violations of the Federal False Claims Act by ANR personnel working in the WSD.

10. Upon information and belief, the acts of the WSD herein complained of, were also perpetrated by other divisions within the three (3) Offices of defendant's DEC; including within the office of Air and Waste Management: the Division of Hazardous Waste Management, the Division of Air Quality, and the Division of Solid Waste Management; and within the office of Water Resources: the Division of Environmental Protection.

11. This action is brought on behalf of the United States to recover all damages, penalties and other remedies established by and pursuant to 31 U.S.C.

§§ 3729-3733, and Jonathan H. Stevens claims entitlement to a portion of any recovery obtained by the United States as *qui tam* plaintiff, his costs and attorneys' fees to the full extent authorized by 31 U.S.C. § 3730(d).

12. Based upon information obtained and/or directly observed by Jonathan H. Stevens during the course of his employment with ANR, the defendant knowingly submitted false claims, records and statements to officials of the United States Environmental Protection Agency, Region 1, Grants Information and Management Section ("EPA") to obtain payment or approval for its employee salaries and wages in connection with ground water protection and public water system management projects being financed with funds from the Federal Treasury and administered through EPA.

13. At all material times, the defendant, through the actions of DEC, substantially funded the budget for the WSD during the Federal Fiscal Year ("FFY") with Federal Treasury funds made available through a series of federal grants under at least two federal public acts: the Safe Drinking Water Act and the Clean Water Act.

14. The grants were administered by the EPA and awarded based upon standardized "Applications for Federal Assistance" prepared and submitted by the defendant, through its employees in the DEC.

15. The federal grants provided funds to pay only "allowable costs" incurred by the defendant in connection with the implementation and enforcement of federal laws concerning public water systems.

16. One of the "allowable costs" was salary expenses for work actually performed on an hourly basis by DEC employees in the Water Supply Division.

17. The funds to pay these costs were provided through letters of credit, against which the defendant, its agents or employees, submitted requests on a regular basis to meet salary and wage expenses for state employees working on federally funded public water supply projects.

18. As a state government recipient of federal grants administered by the EPA, the defendant, through its DEC, was subject to certain post-award reporting requirements and standards under 40 C.F.R. Chapter 1, § 31 and OMB Circular A-87.

19. Pursuant to 40 C.F.R. Chapter 1, § 31 and OMB circular A-87, the defendant, through its DEC, was required to support its charges to federal grant funds for salaries and wages of Water Supply Division employees with time and attendance records for individual employees.

20. Under Federal law these records were required to reflect an after-the-fact distribution of the actual activity of each employee.

21. "Time and attendance records" which reflected pre-allocated federal grant work activity by employees (i.e., estimates determined before the services were performed) did not qualify as support for charges to the federal grants, and any charges to federal grant funds based on such pre-determined estimates were not, as a matter of law, "allowable costs" under 40 CFR § 31.22.

22. At or near the beginning of each FFY a numerical funding source code was assigned to each federal grant fund, which, collectively, were to substantially finance the defendant's employee salaries and wages during the upcoming fiscal year.

23. Prior to the beginning of each FFY, the defendant, by and through management level employees within the DEC, estimated and pre-allocated each WSD employee's Federal- and State-funded work activity for the upcoming FFY.

24. The defendant's estimates of WSD employee federally funded work activity were recorded both as fixed percentages of the employee's time to be allocated to particular federal grant funds over the course of the year, and as specific hours on a bi-weekly basis to be attributed to the particular federal grant funds.

25. Prior to the commencement of any work or services performed during the upcoming funding period, the DEC issued written instructions to each employee in the WSD requiring the employee to complete his or her bi-weekly time report so that the report matched the defendant's pre-allocated, pre-determined estimates of the employee's work hours to be attributed to each federal grant fund from which the employee's salary or wages would be paid during the FFY about to begin.

26. These written instructions provided codes for federal grant-funded activities and one code for activities to be paid from the State's general and permit fee fund.

27. The written instructions to each employee indicated that the employee's time reports "need to reflect the spending of these grants."

28. The written instructions did not require or direct the employee to actually work the allotted hours previously assigned to each federal grant-funded project.

29. The instructions neither described nor detailed the type of work to be performed under each federal funding source code.

30. The instructions related only to the preparation and completion of the employee's time report.

31. Each employee in the WSD who received written instructions from the defendant requiring the employee to prepare his or her time report using the defendant's pre-allocated work activity estimates followed the defendant's instructions.

32. These employee time reports were submitted to EPA by the defendant to support and justify its charges to federal grant funds during the federal fiscal year.

33. The DEC did not, and, upon information and belief, never has maintained any accounting procedure to verify that the pre-allocated employee hours assigned to federal grant funding source codes were actually worked.

34. There were never any quarterly or fiscal year-end adjustments to account for, or even identify, discrepancies between hours actually worked and the original pre-determined estimates.

35. The DEC employee wages and salaries based on pre-allocated federal grant work activity did not qualify

as "allowable costs" chargeable to the federal grants under OMB Circular A-87 and violated 40 C.F.R. § 31.22.

36. Employees of the defendant's DEC did not work the hours which were arbitrarily assigned to them, nor did they record the hours they actually worked under each funding code.

37. Employees, including Jonathan H. Stevens, notified their supervisors at the DEC that the bi-weekly time reports were not accurate, and that employees were not working the pre-allocated hours previously assigned to federal funding sources.

38. These employees were instructed by the defendant's management personnel not to change the funding source codes or hours reported under those codes and DEC continued to submit the time reports to EPA for payment from federal grants.

39. The defendant knowingly and continuously submitted false claims to EPA for salary and wage expenses of its employees purporting to show that employees were working on federally-funded projects when, in fact, they were not working the hours as reported by the defendant.

40. The effect of these reports was to create the impression that the defendant's employees within the DEC were spending the full amount of all federal grant funds made available during the fiscal year in which the alleged work activity took place.

41. The defendant's practice of pre-allocating its DEC employee work hours to federally-funded activities during the fiscal year ensured that the entire amount of each federal grant would be "drawn down" against the

various letters of credit through which the federal funds were made available.

42. The defendant's method of drawing down the DEC's federal grant funding during a fiscal year enabled the DEC to maintain or increase its federal grant funding in successive fiscal years because it was able to obtain the subsequent funding using estimates based upon the previous year's reported spending level.

43. Because the previous fiscal year's spending level was obtained with the use of false "time and attendance records," each subsequent Application for Federal Assistance submitted to EPA by DEC which utilized the previous spending level also constituted a separate false claim, submitted to an officer or employee of the United States Government for payment or approval.

44. The United States has been damaged by the misrepresentations and false claims made and submitted by the defendant to EPA in a sum not less than the total amount of federal grant funding obtained by the DEC, the total of which cannot be calculated with precision at this time but represents a substantial financial injury to the United States.

WHEREFORE, the United States is entitled to damages from the State of Vermont Agency of Natural Resources in accordance with the provisions of 31 U.S.C. § 3729-3733, including civil penalties of not more than Ten Thousand Dollars (\$10,000.00) per false claim, of which up to twenty-five percent of both damages and civil penalties combined should be paid to Jonathan H.

Stevens as relator; and to such further relief as is appropriate, including but not limited to the relator's attorneys' fees and costs.

Dated at Burlington, Vermont, this 26th day of May, 1995.

The United States of America, ex rel Jonathan H. Stevens, *qui tam* and as relator.

BY: PAUL, FRANK & COLLINS, INC.

BY: /s/ Stephen J. Soule
Stephen J. Soule, Esq.
Fed. Bar I.D. 000-60-2907
PO Box 1307
Burlington, VT
05402-1307

BY: /s/ Matthew E. C. Pifer
Matthew E. C. Pifer, Esq.
Fed. Bar ID No.:
000-58-1281
P.O. Box 1307
Burlington, VT
05402-1307

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF VERMONT

THE UNITED STATES OF)
AMERICA, ex rel Jonathan H.)
Stevens,) Civil Action
Relator,) No. 1:95-CV-161
v.)
THE STATE OF VERMONT,)
AGENCY OF NATURAL)
RESOURCES,)
Defendant.)

Motion for reconsideration is GRANTED. Upon
reconsideration, the Court's prior Ruling is AFFIRMED.

Dated at Rutland, Vermont this 10th day of June,
1997.

/s/ J. Garvan Murtha
J. Garvan Murtha,
Chief Judge
